

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JOEL M. SCHUMM
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTHUR THADDEUS PERRY
Special Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DAMIEN SANDERS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0603-CR-124
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause No. 49G06-0307-FD-119409

November 16, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Chief Judge

Damien Sanders pled guilty to resisting law enforcement¹ as a Class D felony, criminal recklessness² as a Class D felony, carrying a handgun without a license³ as a Class C felony, and operating a vehicle when never licensed,⁴ a Class C misdemeanor. He appeals, raising two issues, which we restate as:

- I. Whether the trial court abused its discretion when it imposed consecutive sentences because its decision was based on an improper aggravating circumstance; and
- II. Whether an aggregate sentence of ten years is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 19, 2003, at approximately 5:00 p.m., Indianapolis Police Officer Mark Rinehart was assisting other officers in an investigation of a vehicle they believed to be stolen. The vehicle, which was driven by Sanders, was at the intersection of New York Street and Pennsylvania Street in Indianapolis. When Officer Rinehart attempted to stop the vehicle to determine if it was stolen, Sanders began to flee, driving eastbound on New York Street. During this pursuit, which continued for several blocks, Sanders disregarded numerous red traffic lights. At the intersection of New York Street and Rural Street, Sanders

¹ See IC 35-44-3-3.

² See IC 35-42-2-2.

³ See IC 35-47-2-1; IC 35-47-2-23(c).

⁴ See IC 9-24-18-1.

disregarded a traffic signal and struck a vehicle that was traveling south on Rural Street. The vehicle that Sanders was driving came to a stop after this collision.

The officers approached the vehicle, and noticed Sanders attempting to open the glove box. After the officers got Sanders out of the vehicle, they opened the glove box and found a loaded handgun. Officer Rinehart asked Sanders if he had a license to carry a handgun, and Sanders told him no. Sanders also told the officers that he did not have a driver's license.

On July 24, 2003, the State charged Sanders with resisting law enforcement as a Class D felony, auto theft as a Class D felony, criminal recklessness as a Class D felony, carrying a handgun without a license as a Class A misdemeanor, and operating a vehicle when never licensed, a Class C misdemeanor. Subsequently, it was determined that Sanders had been previously convicted of a felony, and the State amended the carrying a handgun without a license count to a Class C felony. On February 2, 2006, Sander pled guilty to all counts except for the auto theft, which was dismissed. The guilty plea left sentencing to the discretion of the trial court. The trial court sentenced Sanders to two years for resisting law enforcement, two years for criminal recklessness, eight years for carrying a handgun without a license, and sixty days for operating a vehicle when never licensed. All of the sentences were to run concurrently except for the handgun conviction, which was to run consecutively to the rest, for a total of a ten-year sentence. Sanders now appeals.

DISCUSSION AND DECISION

Sentencing determinations are within the sound discretion of the trial court, and we will only reverse for an abuse of that discretion. *Field v. State*, 843 N.E.2d 1008, 1010 (Ind. Ct. App. 2006), *trans. denied*. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* In its sentencing statement, the "trial court must identify all significant aggravating and mitigating factors, explain why such factors were found, and balance the factors in arriving at the sentence." *Id.* (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)). "A single aggravating factor may support the imposition of both an enhanced and consecutive sentence." *Id.* at 1010-11 (citing *Payton v. State*, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), *trans. denied*).

Sanders argues that the trial court abused its discretion when it imposed consecutive sentences because it based its decision on an improper aggravating circumstance. He contends that the trial court relied on the fact that he was carrying a handgun, which is a material element of the offense of carrying a handgun without a license, as an aggravating factor used to impose the consecutive sentences. "[A] factor constituting a material element of an offense cannot be used as an aggravating circumstance." *Comer v. State*, 839 N.E.2d 721, 727 (Ind. Ct. App. 2005), *trans. denied*. He cites to the following portion of the trial court's sentencing statement for his contention:

[H]e said to the police when he was arrested on this case, I don't know why I fled, I just got scared. Well, that's all well and good, and that's sort of a certain course of criminal conduct. But nobody said you had to have a gun,

which he was by law precluded from having at the time as well. And so, I consider that is worthy of running the counts consecutive.

Tr. at 30-31.

Here, the trial court found Sanders's extensive criminal history to be an aggravating circumstance and stated that "the significance of his prior criminal history is overwhelming to the Court." *Id.* at 30. Sanders's criminal history included juvenile adjudications for being a runaway, resisting law enforcement, leaving home, minor consumption of alcohol, possession of marijuana, operating a vehicle when never licensed, theft, and three adjudications for battery. *Appellant's App.* at 52. His adult criminal history included convictions for carrying a handgun without a license, receiving stolen property, criminal mischief, burglary, theft, auto theft, resisting law enforcement, escape, operating a vehicle when never licensed, felony murder, and armed robbery. "A single aggravating factor may support the imposition of both an enhanced and consecutive sentence." *Field*, 843 N.E.2d at 1010-11. Although the trial court gave moderate weight to Sanders's acceptance of responsibility by pleading guilty, it is apparent from the sentencing statement that the trial court found his criminal history to be very significant. We conclude that Sanders's criminal history sufficiently supported both the enhanced and consecutive sentences. The trial court did not abuse its discretion in imposing consecutive sentences.

Sanders also argues that his aggregate sentence of ten years is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B) states that "[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the

nature of the offense and the character of the offender.” *Buggs v. State*, 844 N.E.2d 195, 204 (Ind. Ct. App. 2006), *trans. denied*. Our review under Appellate Rule 7(B) is extremely deferential to the trial court. *Pennington v. State*, 821 N.E.2d 899, 903 (Ind. Ct. App. 2005).

Sanders specifically contends that his sentence is inappropriate because he received a ten-year aggregate sentence, which was the maximum sentence that could have been imposed because his offenses were non-violent crimes and part of the same criminal episode. *See* IC 35-50-1-2(c) (limiting the total of the consecutive terms for non-violent felony convictions arising out of the same episode of criminal conduct to the advisory sentence for felony which is one class higher than the most serious felony for which defendant was convicted). He argues that his sentence was inappropriate because the maximum sentence should be reserved for the worst offenses and the worst offenders and he is not the worst offender nor has he committed the worst offense.

As to the nature of the offense, Sanders was observed by police officers driving a vehicle that was believed to be stolen. When the police attempted to pull him over to determine if the vehicle was indeed stolen, Sanders began to flee. He then led the police on a chase through downtown Indianapolis, disregarding numerous traffic lights for several blocks. The chase only ended when Sanders disregarded a red light and struck a car that was crossing an intersection with the right of way. The occupants of that car had to be cut out of their vehicle and were transported to the hospital for treatment after the accident. When the police approached the vehicle that Sanders was driving, they noticed that he was attempting to open the glove box. After Sanders was removed from the vehicle, the officers discovered

a loaded handgun inside of the glove box, for which Sanders admitted he did not have a license.

As to the character of the offender, Sanders has an extensive criminal history, including many juvenile and adult convictions. The trial court specifically noted that Sanders had a previous conviction for carrying a handgun without a license. *Tr.* at 29. He also had previous convictions for auto theft and resisting law enforcement with a vehicle, which is “a squarely related criminal history” to the present crimes. *Id.* Additionally, when Sanders was out on bail on the present offense, he was charged with and convicted of felony murder and armed robbery. Although Sanders did plead guilty to the present offenses and accepted responsibility, the trial court noted at the end of the sentencing hearing, “I want the record to reflect for the purposes of the appellate court that Mr. Sanders is laughing.” *Id.* at 32. We conclude that a ten-year aggregate sentence is not inappropriate in light of the nature of the offense and Sanders’s character.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur